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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 512

HIRAM REYNOLDS,

Petitioner,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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INDEX

	Page
Petition for Writ	1
A—Jurisdiction	1
B—Summary Statement of Matters Involved	2
C—Questions Presented	2
D—Reasons Relied on for Allowance of Writ	2
Brief in Support of Petition	5
I—Opinion of the Court Below	5
II—Jurisdiction	5
III—Statement of the Facts	6
IV—Question Presented	6
V—Summary of Argument	6
VI—Argument	6
VII—Conclusion	13

Table of Cases

Erie Railroad Company v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188	2, 3, 7, 13
Cushman Motor Delivery Co. v. *McCabe*, 219 Ind. 156; 36 N. E. 2nd, 769	8
Baltimore and Ohio Railroad Co. v. *Reyher, Admrx.*, 216 Ind. 545; 24 N. E. 2nd, 284	8
Bartley v. *Chicago & E. I. Ry. Co.*, 216 Ind. 512; 24 N. E. 2nd, 405	8, 11, 13
Dommer v. *Pennsylvania R. R. Co.* (1946), 156 Fed. 2nd, page 716	8, 10, 11
Coats v. *Strawmeyer*, 107 Ind. App. 102; 21 N. E. 2nd, 433	10
Heiny v. *Pennsylvania R. R. Co.*, 221 Ind. 367; 47 N. E. 2nd, 145	12
Pennsylvania R. R. Co. v. *Dove*, 184 Ind. 447; 111 N. E. 609	13

Statutes

Burns Indiana Statutes, Acts 1899, Ch. 41, Sec. 1, Page 58	7
Title 28, United States Code, Sec. 1254	1
Burns Indiana Statutes, Sub-Sections A & D, Section 47-2004	8, 9
Burns Indiana Statutes, 1933, Section 2-1025	10
Burns Indiana Statutes, 1933, Section 10-1909	12
107 Ind. App. page 105; 21 N. E. 2nd, page 435	10

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Hiram Reynolds respectfully petitions that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause on the 23rd day of October, 1950, petition for rehearing having been denied December 4th, 1950.

A

Jurisdiction

The jurisdiction of this court is invoked under Title 28, United States Code, Section 1254. The decision of the

United States Court of Appeals for the Seventh Circuit was rendered on October 23, 1950. Petition for rehearing denied December 4, 1950.

B

Summary Statement of Matter Involved

Petitioner was permanently injured in a collision between petitioner's automobile and defendant's locomotive at a railroad crossing. Upon the trial of this cause in the District Court the jury rendered a verdict for the plaintiff in the sum of $10,000.00. Defendant's motion for a directed verdict at the close of the plaintiff's evidence and at the close of the defendant's evidence was overruled by the Court. This judgment was appealed to the United States Circuit Court of Appeals, Seventh Circuit, which Court reversed said judgment in an opinion rendered on the 23rd day of October, 1950, and denied a petition for rehearing on December 4, 1950.

C

Questions Presented

The sole question presented is whether the Court of Appeals for the Seventh Circuit erred, when it held that the plaintiff in a personal injury negligence action must prove himself free from contributory negligence as a prerequisite to recovery, by failing to follow the State statutes and decisions of the State of Indiana in a matter of general law as Federal Courts are required to do by the rule laid down by the United States Supreme Court in the case of *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64.

D

Reasons Relied On for Allowance of Writ

The United States Court of Appeals for the 7th Circuit in the instant case has rendered a decision on an important

question of the law of the State of Indiana in a way *directly in conflict* with applicable Indiana statutes and decisions. The Court of Appeals for the Seventh Circuit, in the instant case, held that the plaintiff in a personal injury negligence action must prove himself free from contributory negligence as a prerequisite to recovery. However, it is firmly established both by specific statutes and decisions of the highest court of Indiana that contributory negligence in a personal injury case in Indiana is a matter of defense with the burden of proof resting on defendant, and that when reasonable minds might differ as to the facts it is proper to submit the question of contributory negligence to the jury. By its decision in the instant case, the Court has failed to follow the controlling rule laid down by the United States Supreme Court in *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64, which requires Federal Courts to follow State decisions and statutes on matters of general law.

A supporting brief accompanies this petition.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered by that Court in this cause on the 23rd day of October, 1950, and that said judgment be reversed by this Honorable Court, and that the cause be remanded to the District Court with directions that judgment be entered on the verdict of the jury, with interest from the 19th day of October, 1949, the date of the rendition of the verdict.

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